

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

MIGUEL JENKINS

Appellant

v.

MUSICIAN'S FRIEND, INC.;

Respondent

AND

DIVISION OF EMPLOYMENT SECURITY

Respondent

DOCKET NUMBER **WD72204**

DATE: December 21, 2010

Appeal From:

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division One

Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

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Attorneys:

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MIGUEL JENKINS, Appellant, v. MUSICIAN'S FRIEND, INC., Respondent;
AND DIVISION OF EMPLOYMENT SECURITY, Respondent

WD72204

Labor and Industrial Relations Commission

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Miguel Jenkins worked for Employer as a “Team Lead” in its call center. It was reported to Employer in May 2009 that Jenkins had been having a relationship with a subordinate employee. A supervisor spoke with him, and Jenkins denied the relationship. The supervisor informed Jenkins that if he did become involved with a subordinate employee, he needed to notify Employer and arrangements could be made to remove the employee from Jenkins’s supervision. Subsequently, in July 2009, Employer learned that Jenkins might be having relationships with more than one subordinate employee. An internal investigation confirmed the relationships. The supervisor spoke with Jenkins again, and he admitted to the relationships. Employer placed Jenkins on suspension and subsequently terminated him.

Jenkins sought unemployment benefits, which Employer contested, arguing it terminated Jenkins for violating Employer’s policies. A deputy determined that Jenkins was not disqualified from receiving benefits because Employer did not have a policy against being in a relationship with a subordinate. The Appeals Tribunal reversed the deputy’s decision and determined that Jenkins had been terminated for misconduct. Hence, he was disqualified from receiving unemployment benefits. The Commission affirmed the decision of the Appeals Tribunal. Jenkins appeals.

AFFIRMED.

Division One Holds:

A claimant may be disqualified from receiving unemployment benefits if discharged for misconduct connected with work. In his sole point, Jenkins argues that the Commission’s finding that he was discharged for misconduct connected with work was not supported by sufficient evidence. He contends that he did not knowingly, deliberately, or willfully violate a reasonable work rule because he was not aware of Employer’s requirement that he report romantic relationships with subordinate employees.

He relies on *McClelland v. Hogan Personnel, LLC*, 116 S.W.3d 660, 666 (Mo. App. W.D. 2003), in which we distinguished between misconduct sufficient to discharge an employee from misconduct sufficient to deny an employee unemployment benefits. In that case, we found the employee’s lack of awareness of the employer’s policy did not rise to the level of willful or deliberate conduct sufficient to deny him unemployment compensation absent additional evidence. Here, however, both Employer’s Human Resources coordinator and one of Jenkins’s supervisors testified that Jenkins had been informed that he was required to report any romantic relationship with a subordinate employee so that Employer could arrange to remove the

employee from his supervision. Although Jenkins testified that these conversations did not occur, the Commission's finding rested on a credibility determination. When the evidence is conflicting, the Commission's determination of the facts is conclusive.

Jenkins also argues that the Commission's factual findings on Employer's disclosure requirement were insufficient. We do not agree. The Commission made specific findings (1) that Jenkins was notified he must report any romantic relationship with a subordinate; (2) he failed to disclose a romantic relationship with a subordinate; and (3) by failing to report the relationship, the claimant acted in disregard of Employer's standards of behavior. Jenkins's point is denied.

Opinion by: Thomas H. Newton, Presiding Judge

December 21, 2010

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